

the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by § 702.16.

(c) *Cumulative revenue* means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

(d) *Mining area* means an individual excavation site or pit from which coal, other minerals and overburden are removed.

(e) *Other minerals* means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

#### § 702.10 Information collection.

The collections of information contained in §§ 702.11, 702.12, 702.13, 702.15 and 702.18 of this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0089. The information will be used to determine the initial and continuing applicability of the incidental mining exemption to a particular mining operation. Response is required to obtain and maintain the incidental mining exemption in accordance with section 701(28) of the Act.

Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, OSM Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project (1029-0089), OMB, Washington, DC 20503.

#### § 702.11 Application requirements and procedures.

(a)(1) Any person who plans to commence or continue coal extraction after April 1, 1990, under a Federal pro-

gram or on Indian lands, or after the effective date of counterpart provisions in a State program, in reliance on the incidental mining exemption shall file a complete application for exemption with the regulatory authority for each mining area.

(2) Following incorporation of an exemption application approval process into a regulatory program, a person may not commence coal extraction based upon the exemption until the regulatory authority approves such application, except as provided in paragraph (e)(3) of this section.

(b) Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to April 1, 1990, in a State with a Federal program or on Indian lands, or prior to the effective date of counterpart provisions in a State program, may continue mining operations for 60 days after such effective date. Coal extraction may not continue after such 60-day period unless that person files an administratively complete application for exemption with the regulatory authority. If an administratively complete application is filed within 60 days, the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the regulatory authority makes an administrative decision on such application.

(c) Additional information. The regulatory authority shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

(d) Public comment period. Following publication of the newspaper notice required by § 702.12(g), the regulatory authority shall provide a period of no less than 30 days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

(e) Exemption determination. (1) No later than 90 days after filing of an administratively complete application, the regulatory authority shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt

under this part, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(2) The determination of exemption shall be based upon information contained in the application and any other information available to the regulatory authority at that time.

(3) If the regulatory authority fails to provide an applicant with the determination as specified in paragraph (e)(1) of this section, an applicant who has not begun may commence coal extraction pending a determination on the application unless the regulatory authority issues an interim finding, together with reasons therefor, that the applicant may not begin coal extraction.

(f) Administrative review. (1) Any adversely affected person may request administrative review of a determination under paragraph (e) of this section within 30 days of the notification of such determination in accordance with procedures established under 43 CFR 4.1280 when OSM is the regulatory authority or under corresponding State procedures when a State is the regulatory authority.

(2) A petition for administrative review filed under 43 CFR 4.1280 or under corresponding State procedures shall not suspend the effect of a determination under paragraph (e) of this section.

**§ 702.12 Contents of application for exemption.**

An application for exemption shall include at a minimum:

- (a) The name and address of the applicant;
- (b) A list of the minerals sought to be extracted;
- (c) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;
- (d) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;
- (e) Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and

other minerals to be extracted from the mining area;

(f) The basis for all annual production, revenue, and fair market value estimates;

(g) A description, including county, township if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;

(h) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;

(i) Evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the regulatory authority (The public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation.);

(j) Representative stratigraphic cross-section(s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;

(k) A map of appropriate scale which clearly identifies the mining area;

(l) A general description of mining and mineral processing activities for the mining area;

(m) A summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;

(n) If the other minerals are to be commercially used by the applicant, a description specifying the use;

(o) For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information must also be submitted:

(1) Any relevant documents the operator has received from the regulatory